# STATE OF MICHIGAN

# COURT OF APPEALS

JAMES YARBOROUGH,

Petitioner-Appellee,

v

DEPARTMENT OF CORRECTIONS and CIVIL SERVICE COMMISSION,

Respondents-Appellants.

UNPUBLISHED
April 17, 2003

No. 237651
Ingham Circuit Court
LC No. 01-093046-AA

Before: Talbot, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Respondents appeal by leave granted from an order finding that petitioner was on a medical leave of absence and, as a result, when he returned to work the Civil Service Rules required he be compensated at his former classification. We affirm.

This case arose when respondent Michigan Department of Corrections (MDOC) dismissed petitioner by letter from his employment as a prison warden. On the same day, the MDOC received a fax from petitioner's therapist with a diagnosis of depression and requesting medical leave. The MDOC denied the request for medical leave. Petitioner grieved both his dismissal and the denial of his request to be placed on medical leave.

The grievance hearing officer found that the MDOC had dismissed petitioner for alcoholism, but that MDOC had never disciplined petitioner for alcoholism, and the only performance infraction documented in petitioner's twenty-year history working for the MDOC was a single occasion when petitioner failed to contact his supervisor directly to request annual leave, but instead had his secretary call in the request. The hearing officer found that this did not constitute just cause for dismissal. The MDOC appealed the grievance decision to the Civil Service Employment Relations Board (ERB). The 1999 ERB decision generally affirmed the findings of the hearing officer. The ERB reinstated petitioner with back pay and granted petitioner's request for medical leave. The Civil Service Commission (CSC) reviewed the ERB decision and generally affirmed it.

The MDOC returned petitioner to work as a state division administrator 15. Before his medical leave, petitioner had been classified as a state division administrator 17. Petitioner grieved his demotion, but a 2000 hearing officer decision denied petitioner's claim. Petitioner

applied for leave to appeal, but the ERB recommended denial. A 2000 CSC order adopted the 2000 ERB recommendation as its final decision.

Petitioner appealed to circuit court. The court found that petitioner was on a medical leave of absence and, as a result, when he returned to work with MDOC, Civil Service (CS) Rule 2-8.2 required that he be compensated at his former classification as state division administrator 17. Respondents appealed to this Court.

On appeal, this Court determines whether the court of direct review misapprehended or grossly misapplied the substantial evidence test or applied incorrect legal principles. *Boyd v Civil Service Comm*, 220 Mich App 226, 234-235; 559 NW2d 342 (1996). Application of the substantial evidence test is reviewed for clear error. *Id.* The scope of the circuit court review is established in Const 1963, art 6, § 28, which requires the court to determine whether the administrative action was authorized by law and whether the decision of the hearing officer was supported by "competent, material and substantial evidence on the whole record." *Boyd, supra* at 232.

CS Rule 2-8.2 stated: "An employee granted leave of absence without pay shall be restored to the position formerly occupied or to an equivalent position on the expiration of the leave or, if approved by the appointing authority, before the expiration of the leave."[1]

The 1999 CSC decision granted petitioner a retroactive medical leave of absence. Therefore, respondents must comply with CS Rule 2-8.2 when returning petitioner to work following that leave of absence. Accordingly, the 2000 CSC decision violated CS Rule 2-8.2 and was not authorized by law.

In addition, res judicata applies to both findings of fact and law. *Jones v State Farm Mut Auto Ins*, 202 Mich App 393, 401; 509 NW2d 829 (1993). The CSC is bound by its findings of fact established in the 1999 CSC decision. *Id.* The plain language of the 1999 CSC decision does not authorize a demotion, and the findings of fact indicate a record of only a single item of performance deficiency in twenty years. However, the 2000 hearing officer decision is based in large part on fact determinations that are contrary to the 1999 CSC findings.

Therefore, the trial court neither misapprehended nor grossly misapplied the substantial evidence test or applied incorrect legal principles. *Boyd, supra* at 234-235. Accordingly, the court did not clearly err in its determination.

Respondents also argue that petitioner was collaterally estopped from relitigating his demotion because he failed to challenge the 1999 CSC decision. The requirements for collateral estoppel are summarized in *Eaton Co Rd Comm'rs v Schultz*, 205 Mich App 371, 376-377; 521 NW2d 847 (1994), which states:

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[1] Effective March 17, 2001, CS Rule 2-8.2 was amended and renumbered as 2-12.2 (Michigan Civil Service Commission, Rules Annotated).

> For collateral estoppel to apply, the ultimate issue to be concluded in the second action must be the same as that involved in the first. *Detroit v Qualls*, 434 Mich 340, 357; 454 NW2d 374 (1990). The issues must be identical, and not merely similar, *Wilcox v Sealey*, 132 Mich App 38, 47; 346 NW2d 889 (1984), and the ultimate issues must have been both actually and necessarily litigated. *Qualls, supra.* To be necessarily determined in the first action, the issue must have been essential to the resulting judgment; a finding upon which the judgment did not depend cannot support collateral estoppel. *Id.; People v Gates*, 434 Mich 146, 158; 452 NW2d 627 (1990); *Jackson Dist Library v Jackson Co No 2*, 146 Mich App 412, 422; 380 NW2d 116 (1985), rev'd on other grounds 428 Mich 371; 408 NW2d 801 (1987).

Nowhere was it decided in the 1999 CSC order that petitioner would be demoted. In addition, the issues before the 1999 CSC were whether petitioner was appropriately dismissed, whether he should be granted medical leave, and when he would receive back pay. The question of demotion was not essential to the resulting judgment on these issues; therefore, demotion was not necessarily determined. Because the issue of demotion was not actually litigated or necessarily determined by the 1999 CSC decision, collateral estoppel does not apply. *Eaton Co Rd Comm'rs, supra* at 376-377.

Respondents also argue that the circuit court violated the separation of powers doctrine by infringing on respondent CSC's constitutional duty to determine compensation levels for all classified positions. Const 1963, art 11, § 5 states in pertinent part: "The *commission shall* classify all positions in the classified service according to their respective duties and responsibilities, *fix rates of compensation for all classes of positions*, . . ." [Emphasis added.] The trial court did not determine the rate of pay for any class of employees. Therefore, the court did not invade the constitutional province of the CSC.

Moreover, the court did not create the ambiguity in the pay and work performed by petitioner, but respondents did. The court adjudicated petitioner's rights under the law. Adjudication of the procedural and substantive rights of an individual under the law remains the province and duty of the judicial branch. Const 1963, art 6, § 1.

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Peter D. O'Connell